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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2011-24**

12 **JODY WAYNE LAVY**  
13 **145 NW Fairhaven Lane**  
14 **Dallas, OR 97338**

**A C C U S A T I O N**

15 **Registered Nurse License No. 520610**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs.

23 2. On or about March 25, 1996, the Board of Registered Nursing issued Registered  
24 Nurse License Number 520610 to Jody Wayne Lavy (Respondent). The Registered Nurse  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on April 30, 2012, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 490 of the Code provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

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1        8.    Section 2761 of the Code states:

2        "The board may take disciplinary action against a certified or licensed nurse or deny an  
3 application for a certificate or license for any of the following:

4        "(a) Unprofessional conduct, which includes, but is not limited to, the following:

5        "....

6        "(f) Conviction of a felony or of any offense substantially related to the qualifications,  
7 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
8 conclusive evidence thereof.

9        "...."

10       9.    Section 2762 of the Code states:

11       "In addition to other acts constituting unprofessional conduct within the meaning of this  
12 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
13 chapter to do any of the following:

14       "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed  
15 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or  
16 administer to another, any controlled substance as defined in Division 10 (commencing with  
17 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as  
18 defined in Section 4022.

19       "(b) Use any controlled substance as defined in Division 10 (commencing with Section  
20 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
21 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
22 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
23 ability to conduct with safety to the public the practice authorized by his or her license.

24       "(c) Be convicted of a criminal offense involving the prescription, consumption, or  
25 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
26 or the possession of, or falsification of a record pertaining to, the substances described in

27       ///

28       ///

1 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
2 thereof.

3 "...."

4 10. Section 2765 of the Code states:

5 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a  
6 charge substantially related to the qualifications, functions and duties of a registered nurse is  
7 deemed to be a conviction within the meaning of this article. The board may order the license or  
8 certificate suspended or revoked, or may decline to issue a license or certificate, when the time  
9 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an  
10 order granting probation is made suspending the imposition of sentence, irrespective of a  
11 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person  
12 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict  
13 of guilty, or dismissing the accusation, information or indictment."

#### 14 REGULATIONS

15 11. California Code of Regulations, title 16, section 1444, states:

16 "A conviction or act shall be considered to be substantially related to the qualifications,  
17 functions or duties of a registered nurse if to a substantial degree it evidences the present or  
18 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
19 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

20 "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in  
21 subdivision (d) of Penal Code Section 11160.

22 "(b) Failure to comply with any mandatory reporting requirements.

23 "(c) Theft, dishonesty, fraud, or deceit.

24 "(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the  
25 Penal Code."

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12. California Code of Regulations, title 16, section 1445 provides:

“ . . .

“(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

“(1) Nature and severity of the act(s) or offense(s).

“(2) Total criminal record.

“(3) The time that has elapsed since commission of the act(s) or offense(s).

“(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

“(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

“(6) Evidence, if any, of rehabilitation submitted by the licensee.”

#### **COST RECOVERY**

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### **FIRST CAUSE FOR DISCIPLINE**

**(January 28, 2009, Conviction for DUI With a High BAC on August 29, 2008)**

14. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), on the grounds that he was convicted of a crime that is substantially related to his qualifications, functions and duties as a registered nurse. The circumstances are as follows:

a. On January 28, 2009, in a criminal case entitled *The People of the State of California v. Jody Wayne Lavy*, San Diego Superior Court case number M059651, Respondent was convicted by his plea of no contest to violating Vehicle Code section 23152, subdivision (b), driving under the influence of alcohol with a high blood alcohol content (BAC) of 0.08 percent or more.

1           b.     The facts that led to this conviction are that on August 29, 2008, two San Diego  
2 Police officers observed Respondent sitting in a stopped car with the engine running blocking  
3 traffic in a shopping center parking lot at 1260 University Avenue, San Diego, California. When  
4 a San Diego Police officer approached Respondent's car to ask him to move, he only gave the  
5 officer a blank stare and would not respond to his queries. Respondent then backed up his car  
6 without saying anything and the officers drove around him. As he drove forward he motioned to  
7 the officers as if he had a question. As one of the officers approached his car, he started to drive  
8 off, but stopped abruptly when the officer ordered him to do so. The officer could smell an odor  
9 of alcohol on his breath and he tried to cover his mouth with his hand. Respondent fumbled with  
10 his identification card when the officer asked for it and he did agree to take a portable alcohol  
11 device screening test. The test results revealed his blood alcohol level to be at .284 at 1945 hours  
12 and .249 at 1950 hours. Based on these results and Respondent's behavior, he was placed under  
13 arrest for driving under the influence of alcohol. The officers then transported Respondent to  
14 headquarters for further evaluation where he refused to take a breath test but submitted to a blood  
15 test. He was then booked and transported to County Jail where he was rejected because he told  
16 the nurse he was suicidal. He was then transported to San Diego Psychiatric Hospital where he  
17 was evaluated and cleared for admittance to jail. The officers then took Respondent back to  
18 County Jail where he was admitted. In Respondent's March 2, 2010, correspondence to the  
19 Board of Registered Nursing he admitted that he is a recovering alcoholic and had received some  
20 disappointing personal news on the day of his arrest.

21           c.     As a result of the conviction, Respondent was sentenced to summary probation for  
22 5 years, ordered to violate no laws (minor traffic violations excepted), pay various fines and fees,  
23 complete 15 days of a public service program, with credit for 2 days time served, for a total of 13  
24 days to be completed, adhere to Standard Alcohol Conditions per Vehicle Code section 23600,  
25 complete a first conviction program, and complete a Mothers Against Drunk Driving (MADD)  
26 program as directed by the Assessor.

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1                                   **SECOND CAUSE FOR DISCIPLINE**

2                                   **(Using Alcohol to a Dangerous Extent)**

3           15.   Respondent's license is subject to discipline under Code section 2762,  
4 subdivision (b), in that Respondent used alcohol to an extent dangerous to himself and others as is  
5 set forth in paragraph 14, above, which is incorporated by this reference.

6                                   **THIRD CAUSE FOR DISCIPLINE**

7                                   **(Criminal Conviction Involving the Consumption of Alcohol)**

8           16.   Respondent's license is subject to discipline under Code section 2762,  
9 subdivision (c), in that Respondent was convicted of a criminal offense involving the  
10 consumption of alcohol as is set forth in paragraph 14, above, which is incorporated by this  
11 reference.

12                                   **FOURTH CAUSE FOR DISCIPLINE**

13                                   **(Out-of-State Discipline from the Arizona State Board of Nursing)**

14           17.   On September 24, 2009, the Arizona State Board of Nursing considered the  
15 application for licensure of Respondent (Applicant). On May 27, 2009, Board Staff mailed  
16 Applicant a questionnaire with instructions to provide a written explanation and specific court and  
17 police records regarding each of his arrests, citations or charges, by June 10, 2009. On or about  
18 June 8, 2009, Board staff received Applicant's incomplete response to the Board questionnaire  
19 and Applicant failed to supply a written statement concerning his DUI arrest and conviction. On  
20 or about July 28, 2009, Board staff left Applicant a message to contact Board staff, but he failed  
21 to respond. On or about August 3, 2009, Board staff mailed Applicant a letter requesting that he  
22 contact Board staff, but he failed to respond. On or about August 11, 2009, Board staff again left  
23 Applicant a message to contact Board staff, but he failed to respond. In light of the above  
24 Findings of Fact, the Board denied the application for licensure of Applicant. On September 24,  
25 2009, it was ordered that the application of Applicant for a license to practice as a practical nurse  
26 in the State of Arizona was denied and any temporary license issued to Applicant was revoked.  
27 Pursuant to A.A.C. R4-19-609, the effective date of the Order of Denial is upon expiration of the  
28 time for filing an appeal, thirty days after the date of service of the Order of Denial. It was

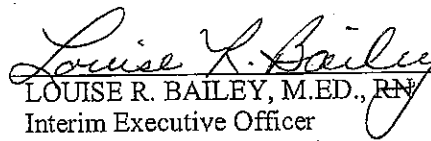
1 further ordered that Applicant is not eligible to reapply for said license pursuant to A.A.C. R4-19-  
2 404 for a minimum, five years from the effective date of the Order of Denial and he shall  
3 immediately cease and desist the practice of nursing in the State of Arizona and is not eligible to  
4 practice nursing in Arizona under the privilege of any Compact state without prior approval from  
5 the Arizona Board of Nursing. The Order of Denial showing Applicant was disciplined by the  
6 Arizona State Board of Nursing effective November 12, 2009, is attached.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 520610, issued to  
11 Jody Wayne Lavy;  
12 2. Ordering Jody Wayne Lavy to pay the Board of Registered Nursing the reasonable  
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
14 Code section 125.3;  
15 3. Taking such other and further action as deemed necessary and proper.

16  
17 DATED: 7/9/10

  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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ATTACHMENT TO ACCUSATION  
ARIZONA STATE BOARD OF NURSING ORDER OF DENIAL NO. 0905044

Janice K. Brewer  
Governor



Joey Ridenour  
Executive Director

## Arizona State Board of Nursing

4747 North 7<sup>th</sup> Street, Suite 200  
Phoenix AZ 85014-3655  
Phone (602) 771-7800 Fax (602) 771-7888  
E-Mail: [arizona@azbn.gov](mailto:arizona@azbn.gov)  
Home Page: <http://www.azbn.gov>

### AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF ARIZONA

COUNTY OF MARICOPA

I, Joey Ridenour, Executive Director for the Arizona State Board of Nursing, County of Maricopa, State of Arizona, do hereby certify that I am the officer having the legal custody for the records hereto attached in the office of the Arizona State Board of Nursing, County of Maricopa, State of Arizona, a public office of said State. The attached copies are true copies of the records on **JODY WAYNE LAVY**. Personnel of the Arizona State Board of Nursing prepared the records during the ordinary course of business.

Witness my hand and the seal of the Arizona State Board of Nursing at 4747 N. 7th Street, Suite 200, Phoenix, Arizona 85014-3655 on December 10, 2009.

SEAL

*Joey Ridenour R.N. M.N. F.A.A.N.*  
Joey Ridenour, R.N., M.N., F.A.A.N.  
Executive Director

RECEIVED BY R. SA  
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BEFORE THE ARIZONA STATE BOARD OF NURSING

IN THE MATTER OF APPLICATION )  
FOR LICENSE BY: )  
JODY WAYNE LAVY )  
TO PRACTICE REGISTERED )  
NURSING IN THE STATE OF ARIZONA )

ORDER OF DENIAL  
NO.  
0905044

On September 24, 2009, the Arizona State Board of Nursing ("Board") considered the application for licensure of JODY WAYNE LAVY ("Applicant").

FINDINGS OF FACT

1. On or about October 7, 2008, Applicant submitted a registered nurse application by endorsement to the Board. Based upon information received during the application process, the Board conducted an investigation.
2. On or about August 29, 2008, according to San Diego Police Department incident number 08080065652, Applicant was arrested for Driving Under the Influence with a Blood Alcohol Content of .26%. Applicant was transported to San Diego Psychiatric Hospital after he told a nurse at the jail that he was suicidal.
3. On or about January 28, 2009, in California Superior Court, County of San Diego, case number M059651, Applicant was convicted, pursuant to a no contest plea, of misdemeanor DUI.
4. On or about May 27, 2009, Board Staff mailed Applicant a questionnaire with instructions to provide a written explanation and specific court and police records regarding each of his arrests, citations or charges, by June 10, 2009.

CLERK OF THE BOARD  
JUL 15 2009  
JUL 15 2009

IT IS FURTHER ORDERED that Applicant is not eligible to reapply for said license pursuant to A.A.C. R4-19-404 for at minimum, five years from the effective date of the Order of Denial.

IT IS FURTHER ORDERED that Applicant shall immediately cease and desist the practice of nursing in the State of Arizona and is not eligible to practice nursing in Arizona under the privilege of any Compact state without prior approval from the Arizona Board of Nursing.

PURSUANT TO A.R.S. § 41-1092.03, any person aggrieved by this Order may apply to the Board, in writing, within thirty days of receipt and request a public hearing with respect to this Order. If you request a public hearing with respect to this Order, you also have the right to request an informal settlement conference by filing a written request with the Board, pursuant to A.R.S. § 41-1092.06, no later than twenty days before the scheduled hearing. The conference will be held within fifteen days after receipt of your request. Please note that you waive any right to object to the participation of the Board's representative in the final administrative decision of the matter if it is not settled at the conference. For answers to questions regarding the appeals process, contact Amy Foster, at (602) 771-7850.

DATED this 24th day of September, 2009.

SEAL

ARIZONA STATE BOARD OF NURSING

*Joey Ridenour R.N. M.N. F.A.A.N.*

Joey Ridenour, R.N., M.N., F.A.A.N.  
Executive Director

JR/DP:eg

RECEIVED  
SEP 25 2009  
ARIZONA STATE BOARD OF NURSING